



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,493	12/17/2001	Glenn M. Tom	472	6536

25559 7590 08/12/2003

ATMI, INC.
7 COMMERCE DRIVE
DANBURY, CT 06810

EXAMINER

LE, HOA T

ART UNIT	PAPER NUMBER
----------	--------------

1773

DATE MAILED: 08/12/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/023,493

Applicant(s)

TOM ET AL.

Examin r

H. T. Le

Art Unit

1773

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15, 17-23 and 33 is/are rejected.
- 7) ☒ Claim(s) 14, 16, 24-32 and 34 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed May 27, 2003 (paper No. 6) reciting the channel as being “cylindrical” in claims 1 and 33 has been entered. However, because the support for the amendment is found in the drawings only, it is suggested that the specification be amended accordingly to provide antecedent basis to the amended term, “cylindrical”, in the claims.

Terminal Disclaimer

2. The terminal disclaimer filed June 24, 2003 (paper No. 7) is deemed improper because the attorney is not of record in the oath/declaration. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c). If the attorney who filed the Terminal Disclaimer is a new or associate attorney, a separate paper appointing the new or associate attorney is required for the terminal disclaimer to be proper.

Responses to Arguments

3. Claims 1-8, 15, 17 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Cabrera et al (WO 98/58253) as set forth in the last office action and further discussed below.

Claims are now amended to recite “interior cylindrical channel” (emphasis added). Although, Cabrera et al do not explicitly describe the macropores (i.e. equivalent to the claimed interior channels) as being cylindrical in shape, the macropores are described as

having a pore diameter of 2 microns in a monolithic body having dimensions 83x7.2mm (see preparative examples A1 and A2 at col. 6). From this description, it is necessary that the macropores are of cylindrical shape because for the pores to reach from one surface of the monolith body to another, they must have a wall length as long as 7.2 mm which is much greater than their diameter of 2 microns. That illustrates a longitudinally oblong tubular shape which is a cylindrical shape.

4. Claims 1-12, 15, 17 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Maroldo et al (US 5,104,530) as set forth in the last office action and further discussed below.

Claims are now amended to recite "interior cylindrical channel" (emphasis added). Although, Maroldo et al do not explicitly describe the macropores (i.e. equivalent to the claimed interior channels) as being cylindrical in shape, the macropores are described as having a pore diameter of 60 to 300nm in a spherical particle having diameter of 850 to 2500 nm (see Example 1 at col. 6). From this description, it is necessary that the macropores are of cylindrical shape because for the pores to reach from one surface of the spherical body to another, they must have a wall length as long as 850 nm which is greater than their diameter of 60 or 300 nm. That illustrates a longitudinally oblong tubular shape which is a cylindrical shape.

5. Claims 13 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tom et al (US 5,704,965) in view of Maroldo et al as set forth in the last office action and further discussed below.

Applicants have made no arguments as to this rejection because applicants have relied on the Terminal Disclaimer to overcome the rejection. However, the Terminal Disclaimer has been deemed improper as set forth in paragraph 2 above. Therefore, the rejection is hereby maintained.

6. Applicant's arguments filed May 27, 2003 have been fully considered but they are not persuasive for reasons set forth in sections 3-5 above.

Allowable Subject Matter

7. Claims 14, 16, 24-32 and 34 are objected to as being dependent upon a rejected based claim, but would be allowable if rewritten in independent form including all of the limitations of the based claim and any intervening claims. The reasons for the indication of allowable subject matter has been set forth in the last office action.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

Art Unit: 1773

In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. T. Le whose telephone number is 703-308-2415. The examiner can normally be reached on 10:00 a.m. to 6:30 p.m., Mondays to Friday.

A handwritten signature in black ink, appearing to read 'H. T. Le'. The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

H. T. Le
Primary Examiner
Art Unit 1773

hl
August 11, 2003